

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MACKENZIE A. BRISTOW,

Plaintiff,

v.

CITY OF SPOKANE, WASHINGTON,
ROGER BRAGDON, and C.
BRENDON,

Defendants.

NO. CV-05-0226-EFS

**ORDER DENYING LINCARE'S MOTION
FOR PROTECTIVE ORDER AND
DENYING DEFENDANTS' MOTION FOR
IN CAMERA INSPECTION**

Before the Court, without oral argument, is Lincare Inc.'s ("Lincare's") Motion for Protective Order (Ct. Rec. 14) and Defendants' Motion for *In Camera* Inspection (Ct. Rec. 19). After reviewing the submitted materials and relevant authority, the Court is fully informed on the issues presented by the parties and hereby grants in part and denies in part Lincare's Motion for Protective Order and denies Defendants' Motion for *In Camera* Inspection.

I. Background

A. Factual History

On June 23, 2004, the Spokane Police Department received a report from Loal Meyers that several checks belonging to her mother, Beatrice Saldin, had been stolen and negotiated under a forged signature. (Ct.

1 Rec. 1 ¶ 9.) Then, on July 22, 2004, Ms. Meyers presented copies of the
2 allegedly stolen checks and a handwritten letter by Plaintiff Mackenzie
3 Bristow to the Spokane Police Department. *Id.* At that time, Ms. Meyers
4 expressed her belief that the handwriting in Plaintiff's letter and the
5 handwriting in the allegedly forged checks were identical. *Id.*

6 On July 28, 2004, after reviewing Ms. Meyers' report and the
7 submitted documents, Defendant C. Brenden, a Spokane Police Department
8 detective, confronted Plaintiff at her place of work, Lincare, in the
9 presence of Lincare supervisors, Jana Sprague and Cindy White. *Id.* ¶ 10.
10 During that confrontation, Defendant Brenden allegedly represented to
11 Plaintiff's Lincare supervisors that Plaintiff had committed at least six
12 counts of forgery and was a methamphetamine user. *Id.* Defendant Brenden
13 also allegedly told Plaintiff's Lincare supervisors that a handwriting
14 expert had concluded the handwriting on Ms. Saldin's allegedly forged
15 checks belonged to Plaintiff. *Id.* On August 3, 2004, following the
16 above-described confrontation, Plaintiff was arrested after allegedly
17 refusing to take a polygraph prior to conferring with an attorney. *Id.*
18 Plaintiff denies forging any checks belonging to Ms. Saldin or being a
19 methamphetamine user. *Id.* Further, Plaintiff claims Defendant Brenden
20 had not obtained the opinion of a qualified handwriting expert as he
21 claimed he had. *Id.*

22 Following her arrest, Plaintiff claims Detective Brenden called
23 Lincare to inform Plaintiff's supervisors that she had been arrested and
24 charged with forgery. *Id.* ¶ 11. After her arrest, Plaintiff submitted
25 to a polygraph examination performed by an independent polygraph
26 examiner. *Id.* This examination allegedly established Plaintiff had

1 truthfully denied forging Ms. Saldin's checks. *Id.* Despite the results
2 of this polygraph examination, Defendant Brenden forwarded a Charging
3 Request to the Spokane County Prosecuting Attorney, requesting Plaintiff
4 be charged with six counts of forgery. *Id.* Plaintiff was then formally
5 charged as requested by Defendant Brenden. *Id.* Ultimately, in May 2005,
6 the charges filed against Plaintiff were dismissed once, according to
7 Plaintiff, it was confirmed that the handwriting on the allegedly forged
8 checks did not belong to Plaintiff. *Id.* ¶ 12.

9 As a result of her arrest, Plaintiff, who worked in Lincare's
10 billing department, was initially placed on administrative leave by
11 Lincare, but ultimately had her employment terminated. (Ct. Rec. 15.)
12 Plaintiff remained unemployed for eleven months. (Ct. Rec. 20.) However,
13 once the charges were dismissed against her, Lincare rehired Plaintiff
14 to work in a different office. *Id.*

15 **B. Procedural History**

16 On August 1, 2005, Plaintiff filed suit against Defendants City of
17 Spokane, Detective Brenden, and Chief of Police Roger Bragdon. (Ct. Rec.
18 1.) On October 4, 2005, Defendants served deposition subpoena duces
19 tecums on three Lincare employees: Cindy White, Michelle Dudley, and Jana
20 Sprague. (Ct. Rec. 15 at 4-12.) The three depositions were noted for
21 October 19, 2005, and requested the "[p]ersonal file of Mackenzie
22 Bristow; any and all material prior to and subsequent of August 3, 2004
23 with respect to the subject matter of Mackenzie Bristow's arrest." *Id.*
24 On October 14, 2005, the three Lincare deponents filed objections to
25 Defendants' subpoenas arguing the requested documentation was not within
26 their care, custody, or control. (Ct. Recs. 4-6.)

1 On October 18, 2005, the day prior to the three Lincare employee
2 depositions and two hours before the Lincare employees' counsel was
3 scheduled to fly to Spokane for the depositions, Defendants cancelled the
4 three depositions. (Ct. Rec. 15 at 13-15.) On October 31, 2005,
5 Defendants noted a Federal Rule of Civil Procedure 30(b)(6) deposition
6 of Lincare, in which they requested various documents relating to
7 Plaintiff's employment and Lincare's client - Ms. Saldin - the victim of
8 the purported forgery. *Id.* at 16-18. In response to this Rule 30(b)(6)
9 deposition notice, Lincare produced nearly 500 responsive documents to
10 Defendants, which included Plaintiff's payroll records, personnel file,
11 and Ms. Saldin's billing and patient files. *Id.* at 19-20.

12 On December 13, 2005, Defendants re-noted the three Lincare
13 employees' depositions for January 4, 2006, and reserved subpoena duces
14 tecums. *Id.* at 23-31. The three Lincare employees appeared for their
15 depositions on January 4, 2006, and according to Lincare, produced all
16 responsive requested documentation. During these depositions, counsel
17 for Lincare repeatedly objected to all questions regarding Lincare's
18 reason for terminating Plaintiff's employment, claiming the questions
19 called for attorney-client protected communications. Additionally,
20 Lincare redacted portions of notes generated by Ms. White based on the
21 attorney-client privilege. (Ct. Rec. 21 Ex. 7.)

22 Defendants now wish to depose additional Lincare employees,
23 including Carlos Reyes, who supervises the three initially deposed
24 Lincare employees and Lisa Wegrzyn, an attorney employed by Lincare in
25 Florida. Lincare claims neither Mr. Reyes nor Ms. Wegrzyn were present
26 when Plaintiff was confronted by Defendant Brenden concerning the alleged

1 forgeries. However, Defendants claim Ms. Wegrzyn was called and placed
2 on speaker phone when Defendant Brenden advised Plaintiff's supervisors
3 he was only investigating Plaintiff and allegedly cautioned Lincare about
4 taking adverse employment action against Plaintiff. Defendants indicate
5 they are willing to drop the remaining deposition requests so long as
6 Lincare provides a brief stipulation regarding Lincare's specific reason
7 for terminating Plaintiff's employment.

8 **II. Analysis**

9 **A. Lincare's Motion for Protective Order**

10 Under Federal Rule of Civil Procedure 26(b)(1), a party "may obtain
11 discovery regarding any matter, not privileged, that is relevant to the
12 claim or defense of any party" For the purposes of Rule
13 26(b)(1), "[r]elevant information need not be admissible at trial if the
14 discovery appears reasonably calculated to lead to the discovery of
15 admissible evidence." FED. R. CIV. P. 26(b)(1). Despite the broad
16 discovery allowances permitted by Rule 26(b)(1), a party or person may
17 move a court for an order protecting it from having to respond to certain
18 discovery requests. See *id.* at 26(c). A protective order may be granted
19 under Rule 26(c) if the Court finds justice requires such an order "to
20 protect a party or person from annoyance, embarrassment, oppression, or
21 undue burden or expense" *Id.*

22 In this instance, the Court finds the information regarding
23 Lincare's reasons for terminating Plaintiff's employment relevant to
24 Defendants' defense. Furthermore, the Court does not find that justice
25 requires an order protecting Mr. Reyes or Ms. Wegrzyn from being deposed,
26 despite Lincare's prior discovery productions and deposition

1 participation. Accordingly, the Court denies Lincare's Motion for
2 Protective Order. Defendants are permitted to depose Mr. Reyes and Ms.
3 Wegrzyn on all relevant, non-privileged issues.

4 **B. Defendants' Motion for *In Camera* Inspection**

5 Defendants ask the Court to order Lincare to send the Court an
6 unredacted copy of a memorandum written by Ms. White to Mr. Reyes on July
7 29, 2004 (Ct. Rec. 21 Ex. 4), so the Court may conduct an *in camera*
8 *inspection* of the memorandum to determine whether it was properly
9 redacted pursuant to the attorney-client privilege. Lincare objects to
10 Defendants' request, arguing that the redactions conceal privileged
11 information that is entitled to protection.

12 Because Ms. Wegrzyn has declared that the "redactions constitute
13 communications between [her] and Lincare supervisors who were seeking
14 legal advice" (Ct. Rec. 25 ¶ 3) and Defendants have provided no basis for
15 questioning Ms. Wegrzyn's assertion, the Court does not find good cause
16 exists to conduct an *in camera* review of the redacted memorandum at this
17 time. For these reasons, Defendants' request is denied.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Lincare's Motion for Protective Order (**Ct. Rec. 14**) is **DENIED**.

20 2. Defendants' Motion for *In Camera* Inspection (**Ct. Rec. 19**) is
21 **DENIED**.

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1 **IT IS SO ORDERED.** The District Court Executive is directed to enter
2 this order and to provide copies to counsel for Plaintiff, Defendants,
3 and Lincare.

4 **DATED** this 17th day of May 2006.

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6 S/ Edward F. Shea
7 EDWARD F. SHEA
 United States District Judge

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